



# TOWN OF GREENWICH

Town Hall, 101 Field Point Road, Greenwich CT 06830

## **Board of Ethics**

Peter Tesei, 1<sup>st</sup> Selectman, Ex Officio Member  
Paul A. deBary, Chairman  
Rev. Ian Jeremiah, Secretary  
Robert V. Sisca, Member  
Robert F. Grele, Member  
John Margenot, Member

## **Annual Report of the Board of Ethics**

### **Fiscal Year 2015-2016**

The Board of Ethics is pleased to submit the following report of its activities for the fiscal year ending June 30, 2016. This report is required to be submitted to the Board of Selectmen and the Representative Town Meeting pursuant to Section 2.12 (c) of the Greenwich Code of Ethics.

### **Executive Summary**

There were no complaints or requests for advisory opinions filed with the Board of Ethics during the 2015-2016 Fiscal Year. Consequently, the Board has been able to focus additional attention on the Town's ethics reporting system, which has been a subject of concern in our reports for several years. This year, after meeting with the 1<sup>st</sup> Selectman, the Town Attorney and the Director of the Department of Human Resources the Board approved a draft of proposed technical amendments to the Code of Ethics to permit the Board to establish an on-line filing system. This draft was submitted to the 1<sup>st</sup> Selectman for consideration.

Seven Town Officers filed financial disclosure forms covering the 2015-2016 Fiscal Year. This level is slightly higher than last year, but significantly lower than the number of filings for prior fiscal years. As with the 2014-2015 period, the Board is pleased to note that most of the decrease from prior years was due to the absence of filings by Town employees stating that they have nothing to disclose. In addition, there has been an increase in the filing of reports that disclose the employment of family members by the Town.

This indicates that recent efforts to educate Town employees about the filing requirements have had an effect. In particular, the past confusion about whether Town Officers are required to file disclosure statements when they have nothing to report appears to have been removed in almost all departments and agencies. Although there is no apparent harm done by these filings, under the current system of paper filings, the Town Clerk would be overwhelmed if all Town Officers filed reports. As a result, the Code of Ethics requires filings only by individuals who have something to report.

The Board continues to be concerned, however, that the current ethics reporting system is not well understood by many Town Officers and that many find it irrelevant or too burdensome to comply with. It also seems clear that some Town Officers continue not to make reports concerning the employment of family members by the Town despite the Board's efforts to encourage them to either file a report or request an advisory opinion requesting clarification of their specific situation. If it receives a complaint, the Board can conclude and report that it believes that the violation complained of has been the result of honest confusion or inadvertence. Obviously, it is difficult to reach such a conclusion when the availability of an advisory opinion seems to have been deliberately ignored.

The Board has benefited from the continuation of budgeted funds to support its operations. This year, the Board was pleased to receive an additional allocation of funds to secure any professional assistance that may be necessary in connection with the preliminary investigation of a complaint, should the need for such funds arise.

During the 2015-2016 Fiscal Year, the Board was given the opportunity to attend the monthly meeting of Town Department heads and discuss the ethics reporting system with them. In addition to implementing an on-line ethics reporting system, the Board encourages the Selectmen and the RTM to continue to take advantage of the resources that the Board is able to provide and to support ethics awareness for all Town employees and expand ethics training for its elected and appointed officials.

### **Complaints of Violations of the Code**

The Board did not receive a single complaint alleging a violation of the Code during the 2015-2016 Fiscal Year.

At times, members of the Board receive informal communications that do not follow the procedures the Board has established for making a complaint under the Code. When these are received, it is our practice to respond to the sender (if known), refer them to the provisions of the Code that might apply to the subject matter and describe the procedures for filing a formal complaint, should it prove appropriate.

The Board has adopted a Statement of Procedures that describes the process by which complaints should be submitted to the Board. Because individuals are often unclear about essential facts, the Statement of Procedures recommends that complainants identify themselves. This makes it easier for the Board to solicit additional information, which may be necessary in order to determine whether a preliminary investigation of the matter dealt with in the complaint should be commenced.

The Code of Ethics doesn't require complainants to identify themselves or complaints to be submitted in any particular form, however. As a result, the Board considers it best to review informal and anonymous submissions carefully and make a determination whether or not, in appropriate circumstances, certain requirements of its Statement of Procedures should be waived in the interest of better serving the purposes of the Code.

For several years, the Board has made a practice of conducting a formal review of all non-conforming communications addressed to the Board as a whole. The purpose of this review is to determine whether the communication contains information that could

serve as the basis for a complaint, even though the communication isn't expressly identified as such. If the Board finds no basis for believing that a violation of the Code may have occurred after carefully considering at face value any allegations made in such a submission, it makes a determination that the requirements of its Statement of Procedures should not be waived and the submission should not be treated as a complaint. Alternatively, if it finds the allegations to contain on their face all the elements of a violation of the Code, the Board will commence a preliminary investigation to determine if there is probable cause to believe that a violation has in fact actually occurred notwithstanding anomalies in the method by which the complaint has been submitted.

During the 2015-2016 Fiscal Year, the Board received numerous emails from an individual who vociferously expressed the opinion that Town officials were behaving in an unethical manner. Some of these emails were addressed to the Board, while the preponderance of these emails copied the Board (or various of its members) on messages sent to others. The Board reviewed the correspondence that was received for several months and could not perceive a basis for believing that a violation of the Code of Ethics had occurred. As a result, the Board asked the individual sending the emails to either file a formal complaint with the Board or address the Board personally at one of its regularly scheduled meetings. It further advised the individual that, after reviewing the prior emails, it found no basis to waive the requirements under its Statement of Procedures and would not consider the matter further unless a formal complaint was filed. As of the end of the 2015-2016 fiscal year, the individual had not yet met with the Board or filed a formal complaint.

As described elsewhere in this report, the Board has been active in efforts to increase awareness of both the requirements of the Code and the procedures for filing complaints. Due to the high level of cooperation and support that the Board has experienced in connection with these efforts, we are inclined to believe that the absence of complaints is indicative of a high level of ethical behavior in Town Government.

### **Requests for Advisory Opinions**

The Board of Ethics did not receive any advisory opinion requests during the 2015-2016 Fiscal Year. However, members of the Board and the Board as a whole provided informal guidance to various Town Officers who requested such assistance either at meetings of the Board or on an ex-parte basis.

## Annual Disclosure Statements

*Review of Filings.* As of September 13, 2016, seven Town Officers filed eight annual disclosure reports with the Town Clerk covering the 2015-2016 Fiscal Year. The following chart summarizes the results of a review of these disclosure forms:

	RTM	Town Employees	Appointees	Total
Fully Compliant	2	3	0	5
Not Compliant	<u>1</u>	<u>1</u>	<u>1</u>	<u>3</u>
<b>Total</b>	<b>3</b>	<b>4</b>	<b>1</b>	<b>8</b>

The Board's review of these reports shows some improvement in the awareness and understanding of the Code of Ethics' requirements on the part of those filing the reports. While there have been a significant number of non-notarized filings in prior years, all the forms filed this year were notarized. In addition, there was only one filing by a Town employee who had nothing to report, while in the past there have been numerous such filings. (There was also one filing showing nothing to report by an appointed official.)

In the last few years, the Board has made efforts to improve the instructions for filling in the annual disclosure form. As a result, a higher percentage of the filings received have been in compliance with the requirements of the Code. Of the six forms filed with the Town Clerk showing interests to report (including two by one person), five were fully compliant with the Code, while the other was substantially compliant, but failed to provide certain required information<sup>1</sup>. As a result, with the exception of the two reports filed to state that the filer had no financial interest in any Town transaction, all of the reports that were filed were substantially compliant with the requirements of the Code.

While we take satisfaction in the fact that the quality of filings that are being made has improved, the miniscule number of filers shows that there is still much more work to be done in order to achieve the robust reporting system that the Code contemplates. The very low number of forms filed, particularly for this year, suggests that additional training is necessary to ensure that all Town Officers are aware when they have an obligation to file.

While the Board believes that there continues to be room for improvements in reporting under the current system, it feels that both the level of reporting and the degree of compliance in reports that are filed would significantly increase if the mechanics of the

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<sup>1</sup> Three persons filed to disclose an interest in a family member's employment by the Town, but did not disclose the actual amount involved in the transaction. While the Board notes that Code of Ethics requires an amount to be stated, it is sensitive to the fact that such information is readily available to the public and

reporting system were enhanced and brought up to date. In particular, an on-line filing system would reduce the amount of time required for Town officers to file and allow for prompts and other interactive features that could provide guidance, help eliminate inadvertent mistakes and give filers the tools they need to properly determine whether they have an interest in a transaction that should be disclosed.

There has been a significant decline in the number of reporting persons during the last few years. This has been principally related to the decrease in unnecessary filings (i.e. those in which the filer indicated that he or she had no interest to declare). As noted in our previous annual reports, the filing of such statements has perplexed the Board and we are pleased to report that it appears to have been significantly reduced. However, the absence of such unnecessary filings has highlighted the low percentage of Town Officers who report and raises the issue as to whether the current system is so antiquated that it encourages non-compliance.

*Current Requirements of the Code.* Section 2.9 of the Code currently requires Town Officers to file written disclosure statements if they have a substantial financial interest in any transaction with the Town totaling \$100 or more. Where an officer has such an interest, the annual disclosure statement is required to:

- be filed within the 30 days following the end of the Fiscal Year
- be filed with the Town Clerk
- be filed on the form prescribed by the Board of Ethics
- be signed under oath
- disclose the position of the filer as a Town Officer
- state the nature of the interest
- state the total amount received from the transaction

*Issues Relating to Compliance.* Although the Code doesn't require it, for many years it's been the practice of the Chair of the Board to prepare an annual reminder of the disclosure requirement. This is sent to all supervisory Town employees and elected and appointed officials with a request that they distribute it to all the individuals they supervise. With the decrease in unnecessary filings, the low level of reporting in response to this reminder has become more apparent. This may in part be due to the failure of some Town Officers to receive the reminders, as the Board relies on these department heads, district leaders and other supervisory personnel to distribute the reminders to affected persons<sup>2</sup>. It may also, however, be a conscious decision on the part of many individuals not to make the filings that the Code requires because they have never developed familiarity with the system or somehow lapsed out of the habit of filing when they are required to do so.

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<sup>2</sup> The Board does not receive confirmation that the reminder has been distributed from most of the supervisors that they are initially sent to. However, in the limited number of instances where it is advised that the reminders have been passed on, reporting does seem to increase.

The current paper filing system was established over 50 years ago. Under this system, the Code requires Town Officers to file a report only *when* they have a financial interest to disclose. If the Code required all Town Officers to file a report *whether or not* they have something to disclose, the Town Clerk would be buried by a blizzard of paper that contains no significant information. However, by using an exceptions reporting system, the Town cannot be sure that all Town Officers are aware of the requirement to report. There is simply no way to know (without independently receiving specific information) whether the failure of a Town Officer to file a statement is due to 1) the absence of a financial interest to disclose, 2) a deliberate decision not to comply with the Code or 3) ignorance of or forgetfulness about the reporting requirements. As a result, a review of the statements that are filed doesn't allow the Board to judge with any certainty the degree of overall compliance with the Town's financial disclosure requirements.

Clearly, however, with several thousand Town employees and elected and appointed officials covered by the requirements of the Code, it seems likely that more than five will have a financial interest in a Town transaction during a fiscal year. The Board is aware, for example, of several situations where the Town employs more than one member of a family and no disclosure report has been filed.<sup>3</sup> In light of the evident failure to make such obvious disclosures, one must question whether other less evident interests might also not have been reported on and what the reasons for such failure might be. In particular, the Board has questioned for several years whether the reporting system itself may be part of the problem and a more user-friendly reporting system might result in improved reporting.

To the individuals required to file reports, some aspects of the current system may seem unduly burdensome, particularly if they are accustomed to using on-line systems to file other reports or engage in similar transactions. One particular concern of the Board has been the requirement that disclosure statements must be notarized. Another is the requirement that reports only be filed at the end of the year; up to thirteen months after the transaction being reported on may have occurred.<sup>4</sup> These requirements may serve as significant disincentives for reporting, especially when the individual may not have convenient access to a notary or the information needed to complete the form may not be readily available at the time he or she is required to make the filing. When the interest being reported (or the likelihood that nondisclosure will be noticed) seems small, some may consider that they will be better off not filing a statement rather than take the risk that they will be held responsible for making an inaccurate statement under oath.

*Purpose of the Disclosure Requirement.* Some Town Officers appear to believe that the disclosure requirement is intended as means of discouraging *impermissible* interests. They therefore assume incorrectly that they are not required to report their *permissible* interests. This is a serious misconception. In fact, the Code does not assume that people will report their impermissible interests or even be dissuaded from having

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<sup>3</sup> In its advisory opinions, the Board has consistently indicated for many years that the Code requires Town Officers to file a disclosure statement showing their interest in another family member's employment by the Town.

<sup>4</sup> Town Officers are thus required to keep track of all financial interests that they may have in Town transactions throughout the fiscal year in order to report on them after the close of the fiscal year, which can require record keeping and reporting on transactions that are over a year old.

impermissible interests by the threat that they will be prosecuted for failing to report them. Rather, it assumes that public confidence is improved when *permissible* financial interests are disclosed and requires disclosure of these interests as the best way to reassure the public that they do not influence Town decisions with respect to various transactions. It assumes that people who are willing to disclose their interest in a transaction will also be willing to avoid involvement in the transaction. As a result, the Board is concerned that the overall low level of filings is an indication that the Town's ethics reporting system is not serving its intended purpose.

*Recommended Changes.* During the 2015-2016 Fiscal Year, the Board met with the First Selectman, the Town Attorney and the Director of the Department of Human Resources to discuss the possibility that the ethics reporting system could be updated and improved. During these meetings we discussed the possibility of amending the Code of Ethics to provide for an on-line system of reporting that would allow for filings when an interest arises, rather than at the end of the fiscal year, and eliminate the burdensome and unnecessary requirement that filings be notarized.

It is the *absence* of a report, not the *presence* of a notary's signature, which is most material to the issue of financial disclosure. Where a relevant transaction has not been reported at all, the absence of a notary's signature is immaterial. Moreover, it is the degree of *error* that should be at issue in an inaccurate report, not the degree of *seriousness* by which the erroneous information was attested to. For this reason, the Board feels that the adoption of an on-line disclosure system that does not involve notarized statements will improve, rather than degrade, the efficacy of the Town's ethics disclosures.

The Board also believes that a system of reporting that would require disclosure at the time that a Town Officer becomes aware that he or she has an interest in a Town transaction, rather than retroactively at year end, will be a more efficacious system for all concerned. We believe that this real time system would be both easier for Town Officers to comply with and provide more timely and useful information to the public.

As a result, the Board believes that such a system would significantly reduce the amount of effort required for Town Officers to properly discharge their financial reporting obligations and would also provide more timely, accurate and useful information to the public. At the request of the 1<sup>st</sup> Selectman, the Board prepared and approved a draft of a proposed technical amendment to permit such a system to be established as an alternative to the current system for those who choose to use it. This has been provided to the 1<sup>st</sup> Selectman for consideration.

## **Plans and Recommendations**

*Continuing Initiatives.* During the 2015-2016 Fiscal Year, the Board will continue to be available to provide information about the requirements of the Code as requested by Town Officers and the community at large. As in the past, members of the Board also stand ready to provide training to assist Town Officers in better understanding the who, why, what, where and when of the disclosure process as well as the ways in which the provisions of the Code affect them generally.

*Recommendations.* Following a review of its activities and experiences in the 2015-2016 Fiscal Year, the Board wishes to make the following recommendations to the Board of Selectmen and the RTM:

**1. Adopt Technical Amendments to the Code of Ethics to Modernize the Town's Financial Disclosure Reporting System.** The reporting provisions of the Code of Ethics indicate that requiring disclosure of financial interest is an important Town policy. Implicit in this policy is the assumption that disclosure is a beneficial process that can enhance public confidence in the operations of Town government. The current system, however, can be difficult to comply with. We believe that a real-time reporting system that can be accessed on-line and dispenses with the requirement for notarized statements would be both easier for Town Officers to comply with and provide more timely and useful information to the public. However, the Board is not in a position to implement these changes by itself. Any change from an annual paper-based reporting system to a contemporaneous on-line reporting system or decision to drop the requirement that statements must be filed under oath, would require a technical amendment to the Code of Ethics. The Board has proposed a draft of such technical amendments and would be happy to assist the Selectmen and the RTM with the process of reviewing any proposed revisions to such technical amendments that might be proposed.

**2. Continue Training Efforts.** Training is a vital component of any ethics program. The Board encourages the Department of Human Resources to continue its efforts to ensure that the requirements of the Code of Ethics and the Town-wide Ethics Policy are fully understood by all Town employees. In addition, the Board encourages the Town to pursue additional training for elected and appointed Town officers, as well as Town employees, with respect to the requirements of the Code of Ethics in general, and in particular as to reporting requirements.

**3. Increase the Board's Budget for Investigative Expenses.** The Town's Code of Ethics Board requires the Board to investigate all complaints that are filed with the Board. Under the Board's procedures, and as provided by state law, the Board conducts a confidential preliminary investigation to determine whether there are grounds for a further investigation. The Board was pleased to have received an allocation of funds for this purpose in the current budget. Should the funds be unnecessary, they would of course not be used. However, the amount allocated was less than the amount that the Board considers advisable to ensure a robust preliminary investigation should the need arise. Unless the Board has an allocation of funds that are reasonable to cover possible expenses of a preliminary investigation, it faces a Hobson's choice of either compromising the quality of the investigation or compromising the confidentiality of the investigation by requesting additional funds to pursue it. Therefore, it intends to request a larger set-a-side of funds for this purpose in the coming fiscal year.

The Board invites comments from Town Officers or members of the general public on both its activities and plans and recommendations. Interested persons may



request to address the Board at any of its public meetings or speak to any member of the Board personally by calling (888) 432 2777.

**September 15, 2016**